

Judge Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ANGEL RODRIGUEZ,

Case No. CV-11-00590 RSM

Plaintiff,

v.

PORTRAIT OF PORTFOLIO RECOVERY ASSOCIATES, LLC,

DEFENDANT'S AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM

Defendant.

15 Defendant Portfolio Recovery Associates, LLC ("PRA") answers plaintiff's
16 complaint as follows:

INTRODUCTION

18 1. Admits that the complaint purports to be based on the Fair Debt Collection
19 Practices Act, 15 U.S.C. §1692 et seq. (“FDCPA”), but denies any liability under or
20 violation of the FDCPA.

21 2. Admits that the court generally has subject matter jurisdiction over FDCPA
22 claims, but denies the remaining allegations in paragraph 2.

23 3. Admits that it is subject to the court's personal jurisdiction, but denies the
24 remaining allegations in paragraph 3.

25 4. PRA lacks sufficient information to form a belief as to the truth of the
26 allegations in paragraph 4 and, therefore, denies those allegations.

PARTIES

5. PRA lacks sufficient information to form a belief as to the truth of the allegations in paragraph 5 and, therefore, denies those allegations.

6. Admits that, when it engages in certain activities, it may fit the definition of "collector" under 15 U.S.C. §1692a(6). PRA denies the remaining allegations in paragraph 6.

7. Admits that it is a Delaware LLC with headquarters in Norfolk, Virginia.

8. Admits that it generally acts through its authorized agents and employees, denies the remaining allegations in paragraph 8.

FACTUAL ALLEGATIONS

9. Admits that it uses the telephone number 412-282-1420 to place calls, but denies that it attempted to contact plaintiff for any reason. PRA further denies the remaining allegations in paragraph 9.

10. Admits that, in December 2010, it dialed a telephone number in the State of Washington seeking to reach a non-party to this action whose first name is Tracy; that, in doing so, it may have reached plaintiff. PRA denies the remaining allegations in paragraph 10.

11. Denies the allegations in paragraph 11.

12. Denies the allegations in paragraph 12.

COUNT I

FAIR DEBT COLLECTION PRACTICES ACT

13. Denies the allegations in paragraph 13, including subparagraphs a. and b.

14. Denies that plaintiff is entitled to the relief sought in paragraph 14.

15. Denies that plaintiff is entitled to the relief sought in paragraph 15.

16. Denies that plaintiff is entitled to the relief sought in paragraph 16.

1 17. Except as specifically admitted, PRA denies each and every allegation of
2 the complaint.

AFFIRMATIVE DEFENSES

4 18. Plaintiff fails to state factual matter sufficient to constitute a claim against
5 PRA.

6 19. To the extent he had any telephone conversations with PRA, plaintiff was
7 disingenuous about his true identity, used two different names, and obstructed PRA's
8 good faith attempts to conduct its business in compliance with the law. Accordingly,
9 plaintiff's claims should be barred by his own conduct and/or by the doctrine of unclean
10 hands.

11 20. After PRA was informed that the telephone number it was calling was not
12 the correct number, it made no further calls to that number.

13 21. Plaintiff's claims are barred, in whole or in part, by the statute of
14 limitations.

15 22. PRA acted in good faith and in conformity with staff opinion letters of the
16 Federal Trade Commission

17 23. To the extent plaintiff is able to prove a violation of the FDCPA, any such
18 violation resulted from a bona fide, unintentional error notwithstanding the maintenance
19 of procedures reasonably adapted to avoid any such error. Therefore, PRA should not
20 be held liable for any such violation.

21 24. Plaintiff's damages, if any, were caused and/or aggravated by his own
22 failure to mitigate them.

COUNTERCLAIM

24 25. PRA realleges and incorporates by reference paragraphs 1 through 24
25 above.

1 26. Based on the conduct described in paragraph 19 and the other facts set
2 forth above, plaintiff has brought this action in bad faith and for the purpose of
3 harassment. Accordingly, PRA is entitled to recover its attorney's fees and costs under
4 15 U.S.C. §1692k(a)(3).

RESERVATION OF RIGHT TO AMEND

6 27. PRA reserves its right to amend and to add further defenses or claims, as
7 relevant information becomes available.

8 WHEREFORE, PRA prays for judgment in its favor and dismissal of plaintiff's
9 claims with prejudice; for judgment in its favor on its counterclaim; for its attorney's fees,
10 costs and disbursements; and for any further relief that the court decides is proper.

11 DATED: September 2, 2011

COSGRAVE VERGEER KESTER LLP

/s/ Robert E. Sabido

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Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on September 2, 2011, I electronically filed the foregoing

3 **DEFENDANT'S AMENDED ANSWER, AFFIRMATIVE DEFENSES, AND**
4 **COUNTERCLAIM** with the Clerk of the Court using the CM/ECF System which will send
5 notification of such filing to the following:

6 Sharon Cousineau
Cousineau Law Group, LLC
7 700 West Evergreen Boulevard
Vancouver, WA 98660
8 Attorneys for Plaintiff

DATED: September 2, 2011

/s/ Robert E. Sabido
Robert E. Sabido